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COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS
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13-31 August 2001

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLES 16 AND 17 OF THE COVENANT

Concluding observations of the Committee on Economic, Social and Cultural Rights

GERMANY

1. The Committee on Economic, Social and Cultural Rights considered the fourth periodic report of Germany on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/4/Add.3) at its 48th and 49th meetings (E/C.12/2001/48 and 49), held on 24 August 2001, and adopted, at its 58th meeting (E/C.12/2001/58), held on 31 August 2001, the following concluding observations.

A. Introduction

2. The Committee welcomes the third periodic report of the State party, which was prepared in general conformity with the Committee's guidelines.

3. The Committee notes with appreciation the high quality of the extensive written and oral replies given by the State party, as well as the open and constructive dialogue with the delegation, which included government officials with expertise in the subjects relevant in the context of the Covenant.

B. Positive aspects

4. The Committee recognizes that the State party is at present actively promoting economic, social and cultural rights both nationally and internationally. The Committee particularly welcomes recent positive developments concerning these rights, such as the consultation organized by the State party on the right to food in Bonn in March 2001, the State party's efforts at the United Nations Commission on Human Rights to establish the mandate of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and its revised and more favourable position on a draft optional protocol to the Covenant.

5. The Committee acknowledges the efforts made by the State party to combat racism and xenophobia, in particular the creation by the Federal Government of the Alliance for Democracy and Tolerance Against Extremism and Xenophobia.

6. The Committee notes with satisfaction that the State party has involved the NGO forum World Forum for Social Development in the preparation of its report, in accordance with the Committee's recommendation in 1998 (E/C.12/1/Add.29, para. 39).

7. The Committee also notes with appreciation that the State party is committed to international cooperation and the provision of development aid, in both bilateral and multilateral frameworks, to combat poverty and promote economic, social and cultural rights.

8. The Committee warmly welcomes the creation of the Parliamentary Committee on Human Rights and Humanitarian Affairs in 2000 and the German National Human Rights Institute (DIMR) in 2001.

9. The Committee acknowledges with appreciation the efforts made by the State party towards the elimination of disparities in living conditions between old and new Länder since reunification in 1990.

10. The Committee welcomes the revision of the State party's legislation and policy on naturalization, which now facilitates the acquisition of German citizenship.

11. The Committee recognizes the progress achieved by the State party against commercial sexual exploitation, in particular of minors.

C. Principal subjects of concern

12. While welcoming the recent establishment of the DIMR, the Committee notes that the Institute's functions appear to be limited to research, education and the provision of policy advice, and that it does not enjoy the powers often associated with national human rights institutions, such as the power to investigate complaints, conduct national inquiries and formulate recommendations for employers and other actors. In the context of the Covenant, these limitations are especially regrettable because economic, social and cultural rights receive less attention and enjoy fewer safeguards than civil and political rights in the State party.

13. The Committee reiterates its concern about the lack of any court decisions in which reference is made to the Covenant and its provisions, as indicated by the statement made by the State party in its written replies to the list of issues and as confirmed by the delegation during its dialogue with the Committee. The Committee is concerned that judges are not provided with adequate training on human rights, in particular on the rights guaranteed in the Covenant. A similar lack of human rights training is discerned among prosecutors and other actors responsible for the implementation of the Covenant.

14. The Committee expresses its concern that there is no comprehensive and consistent system in place that ensures that the Covenant is taken into account in the formulation and implementation of all legislation and policies concerning economic, social and cultural rights.

15. The Committee regrets that, according to UNDP, the State party devoted 0.26 per cent of its GNP to official development assistance (ODA) in 1998, well below the goal of 0.7 per cent set by the United Nations.

16. The Committee is concerned about the considerable length of time taken to process applications for asylum, resulting in the limitation of the enjoyment of the economic, social and cultural rights enshrined in the Covenant by asylum-seekers and their dependents.

17. The Committee is concerned that, despite the great efforts made by the State party to narrow the gap between the new and the old Länder, considerable differences continue to exist, particularly in terms of generally lower standards of living, a higher unemployment rate, and lower wages for civil servants in the new Länder.

18. The Committee expresses its concern about the high levels of unemployment that continue to persist in the State party, especially among the youth. The problem of youth unemployment is particularly grave in the new Länder, resulting in the migration of young persons to the old Länder. The Committee is further concerned that vocational training programmes for the youth are not adequately adapted to their needs.

19. Like the ILO, the Committee is concerned about the persisting impediments to women in German society, in terms of promotion in employment and equal wages for work of equal value, both in the private and public sectors, and especially in federal bodies and academic institutions, despite the efforts of the State party to give a new impetus to the equal participation of women in the labour market.

20. The Committee is concerned that the State party has not adequately addressed the issue of illegal workers who are employed in the "shadow economy", such as workers in households, hotel and catering industries, agriculture and the cleaning and building industries, who do not enjoy any rights or protection and do not get paid regularly or adequately.

21. The Committee is concerned that prisoners who undertake labour for private companies may be doing so without having expressed their prior consent.

22. The Committee reiterates its concern, in line with the Human Rights Committee and the ILO Committee of Experts, that the prohibition by the State party of strikes by public servants

other than public officials who do not provide essential services, such as judges, so-called Beamte and teachers, constitutes a restriction of the activities of trade unions that is beyond the scope of article 8 (2) of the Covenant. The Committee disagrees with the State party's statement that "a strike would be incompatible with this duty of loyalty and would run counter to the purpose of a professional civil service" (E/C.12/4/Add.3, para. 82), as this interpretation of "the administration of the State" mentioned in article 8 (2) of the Covenant exceeds the more restrictive interpretations by the Committee, the ILO (Convention No. 98) and the European Court of Justice.

23. The Committee is concerned that the State party's reformed social security, and the pension system under reform, do not take sufficiently into consideration the needs of families, women, elderly persons and the more disadvantaged groups in society. The Committee notes that the pension reform is currently still in progress, but that the Federal Constitutional Court recently referred to potential discrimination against families under the scheme as envisaged.

24. The Committee expresses its grave concern about inhumane conditions in nursing homes owing to structural deficiencies in nursing, as confirmed by the Medical Service of the national associations of health insurances (MDS).

25. The Committee is concerned that the victims of trafficking in persons, and in particular women, are doubly victimized, owing to a lack of sensitization of police, judges and public prosecutors, a lack of appropriate care for victims, and the risks and dangers awaiting them upon deportation to their home countries.

26. The Committee is concerned about the shortage of child day care institutions, which constitutes an obstacle to women's equal participation in the labour market, as well as to the State party's efforts to promote gender equality.

27. The Committee reiterates its concern that the State party has not yet established a definition of poverty, nor a poverty threshold. The Committee is particularly concerned about the fact that social assistance provided to the poor and socially excluded - such as single parents, students and disabled pensioners - under the Federal Social Assistance Act is not commensurate with an adequate standard of living.

28. The Committee reiterates its concern about the rising number and plight of homeless persons in Germany, as mentioned in the Committee's concluding observations of 1998.

29. The Committee is concerned that several Länder have abandoned the principle of free higher education by requiring the payment of fees, which in some cases are allocated to cover administrative costs of the Länder, and not university expenditure.

E. Suggestions and recommendations

30. Given the limited functions and powers of the DIMR, the Committee recommends that the State party take steps either to extend the Institute's functions and powers, or to establish a separate national human rights institution with broad functions and powers, such as those indicated in paragraph 12. In the meantime, the Committee recommends that the DIMR,

consistent with its existing functions and powers: devote the same attention to economic, social and cultural rights as to civil and political rights; organize programmes to raise awareness of economic, social and cultural rights, especially among public officials, lawyers and the judiciary; give particular attention to the relationship between human rights and international cooperation; and be responsible for preparing a comprehensive plan of action, as called for in Part II, paragraph 71, of the Vienna Declaration and Programme of Action.

31. The Committee encourages the State party, as a member of international financial institutions, in particular the International Monetary Fund and the World Bank, to do all it can to ensure that the policies and decisions of those organizations are in conformity with the obligations of States parties to the Covenant, in particular the obligations contained in articles 2 (1), 11, 15, 22 and 23 concerning international assistance and cooperation.

32. The Committee suggests that the State party review and strengthen its institutional arrangements within the public administration, to ensure that its obligations under the Covenant are taken into account at an early stage in the formulation of legislation and policy on issues relating to social welfare and assistance, housing, health and education. The State party is further encouraged to introduce "human rights impact assessments", comparable to environmental impact assessments, to ensure that the provisions of the Covenant are given due attention in all legislative and administrative policy and decision-making processes.

33. The Committee urges the State party to ensure that its percentage of GNP devoted to ODA rises steadily towards the United Nations goal of 0.7 per cent.

34. The Committee recommends that the State party address more expeditiously applications for asylum in order to avoid limiting applicants' enjoyment of their economic, social and cultural rights.

35. The Committee encourages the State party to continue undertaking measures to ensure that the differences between new and old Länder in terms of standard of living, employment and wages for civil servants are decreased.

36. The Committee recommends that the State party take immediate necessary measures to continue to address the high level of unemployment, especially among the youth and in particular in the Länder faced with higher levels of unemployment. The Committee also recommends that the State party provide incentives for young persons to stay and work in their own regions.

37. The Committee recommends that the State party continue to undertake necessary measures, including legislative and administrative ones, to ensure that women enjoy full and equal participation in the labour market, particularly in terms of promotion and equal wages for work of equal value.

38. The Committee strongly recommends that the State party take the necessary legislative and administrative measures to oblige employers to respect labour legislation and to declare the persons they employ, in order to reduce the number of illegal workers who do not enjoy the minimum protection of their rights to social security and health care.

39. The Committee recommends that the State party undertake measures to ensure that prisoners working for private companies do so after having expressed their prior consent.

40. The Committee reiterates its recommendation to the State party that it ensure that civil servants who do not provide essential services have the right to strike, in accordance with article 8 of the Covenant.

41. The Committee urges the State party to ensure that the reformed social security system, and the pension system under reform, take into account the situation and needs of disadvantaged and vulnerable groups in society. In particular, the Committee strongly urges the State party to address the problems and deficiencies emerging in the implementation of the long-term insurance scheme. The Committee requests the State party to provide detailed information on the results of the implementation of the reformed pension scheme in its next periodic report.

42. The Committee also urges the State party to adopt urgent measures to improve the situation of patients in nursing homes.

43. The Committee strongly recommends that the State party undertake training programmes for those dealing with victims of trafficking in persons to ensure that they are sensitized to the needs of the victims, to provide better protection and appropriate care, and to ensure that victims can claim redress before courts of law.

44. The Committee recommends that the State party increase the availability of child day care institutions, especially in the western Länder.

45. The Committee urges the State party to establish a poverty threshold for its territory, taking into account the parameters used in the State party's first poverty and prosperity report, as well as international definitions of poverty, including the one adopted in the Committee's statement on poverty. In particular, the Committee urges the State party to ensure that social assistance provided under the Federal Social Assistance Act is commensurate with an adequate standard of living.

46. The Committee also urges the State party to take effective measures, and to devise programmes, to examine the extent and causes of homelessness in Germany and to ensure an adequate standard of living for the homeless.

47. The Committee recommends that the State party's Federal Government introduce a reduction of tuition fees in the national framework legislation regulating higher education, with a view to abolishing them. The Committee requests the State party to provide detailed and updated information and comparative statistical data on the quality of tertiary education, such as class sizes, in its next periodic report. The Committee also requests the State party to provide up-to-date information in its next periodic report on the extent of human rights education in the German education system.

48. The Committee requests the State party to disseminate its concluding observations widely among all levels of society and to inform the Committee of all steps taken to implement them in its next periodic report. It also encourages the State party to continue to involve non-governmental organizations and other members of civil society in the preparation of its next periodic report.

49. Finally, the Committee requests the State party to submit its fifth periodic report by 30 June 2006, and to include in this report detailed information on the steps it has undertaken to implement the recommendations contained in the present concluding observations.